

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESALE PRICE)	MDL No. 1456
LITIGATION)	Civil Action No. 01-12257-PBS
_____)	
)	Subcategory No. 06-11337-PBS
THIS DOCUMENT RELATES TO:)	
)	Hon. Patti B. Saris
<i>United States of America ex rel. Ven-a-</i>)	
<i>Care of the Florida Keys, Inc. v. Abbott</i>)	
<i>Laboratories, Inc., Civil Action No. 06-</i>)	
<i>11337-PBS;</i>)	
)	
<i>United States of America ex rel. Ven-a-</i>)	
<i>Care of the Florida Keys, Inc. v. Dey, Inc.,</i>)	
<i>et al., Civil Action No. 05-11084-PBS;</i>)	
<i>and</i>)	
)	
<i>United States of America ex rel. Ven-a-</i>)	
<i>Care of the Florida Keys, Inc. v.</i>)	
<i>Boehringer Ingelheim Corp., et al., Civil</i>)	
<i>Action No. 07-10248-PBS</i>)	

**UNITED STATES' AMENDMENT TO ITS PARTIAL OPPOSITION
TO DEFENDANTS' MOTION FOR LEAVE TO FILE UNDER SEAL,
AND
ASSENTED-TO MOTION TO SUBSTITUTE A FILED EXHIBIT
WITH A PARTIALLY REDACTED EXHIBIT
AND TO FILE THE UNREDACTED EXHIBIT UNDER SEAL**

On September 4, 2009, the United States filed a Partial Opposition to Defendants' Motion For Leave to File Under Seal (MD #6477, Sub. #433), in which the United States opposed the filing under seal of certain Rule 30(b)(6) testimony of third parties Thompson PDR, Inc., Cardinal Health, Inc. (including a deposition exhibit), and

McKesson Corporation. One ground for the United States' opposition was that none of the third parties had provided a followup designation of specific portions of the transcripts as "confidential" as required by the pertinent Protective Orders.

Since the filing of the opposition, counsel for the United States has conferred with counsel for McKesson Corporation and has learned that McKesson in fact prepared letters in which it designated specific portions of testimony as "confidential." Although it appears that these letters were never served on counsel, the United States is nonetheless willing to accept that the designations were made. The United States and McKesson have reached agreement on the designation of certain portions of the relevant exhibits as "confidential" and McKesson's withdrawal of claims of confidentiality as to certain other portions of testimony. The agreement is memorialized in the attached letter (Exhibit A). Accordingly, the United States hereby withdraws its opposition to the defendants' motion to seal (MD #6420, Sub. #395) to the extent reflected in the attached letter agreement, and requests that the defendants file redacted versions of the pertinent exhibits on the public record. This relates to solely to the Rule 30(b)(6) deposition testimony of McKesson Corporation (Saul Factor, June 20, 2008, and September 4, 2008), appearing at Exhibits 299 and 302 to the Declaration of Sarah L. Reid in Support of Dey's Opposition to Plaintiffs' Motion for Partial Summary Judgment (MD #6426, Sub. 406).

In addition, the United States has reached agreement with McKesson that certain testimony in Exhibit 13 to the July 24, 2009, Declaration of George B. Henderson, II In Support of Plaintiffs' Motion For Partial Summary Judgment and In Opposition To Dey's Motion For Partial Summary Judgment (MD #6298, Sub. #303)¹ is properly designated as "confidential." Accordingly, the United States requests that that Exhibit be withdrawn from the public record, and that the United States be permitted to file a redacted version on the public record and an unredacted version under seal. If this motion is allowed, the undersigned will contact the Court's docket clerk to provide assistance as needed.

Respectfully submitted,

TONY WEST
ASSISTANT ATTORNEY GENERAL

MICHAEL K. LOUCKS
ACTING UNITED STATES ATTORNEY

By: /s/ George B. Henderson, II
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¹ The exhibit is at MD #6299-14, Sub. #304-14.

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Dated: September 11, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused an electronic copy of the above document to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties. In addition, I have on this day separately transmitted by email a copy to counsel for McKesson Corporation.

Dated: September 11, 2009

/s/ George B. Henderson, II
George B. Henderson, II